

PLANNING BOARD MEETING

TIPP CITY, MIAMI COUNTY, OHIO

September 11, 2007

Meeting

Chairman Michael McFarland called this meeting of the Tipp City Planning Board to order at 7:30 p.m.

Roll Call

Roll call showed the following Board members present: Mike McFarland, John Berbach, Bryan Blake, and Mark Springer.

Others in attendance: Assistant City Manager Brad Vath, City Planner/Zoning Administrator Matt Spring, and Board Secretary Marilyn Fennell. Those signing the guest register included: Paul Lee, David Glaser, Carolyn Glaser, Adam Blake, and Matt Owen. Nancy Bowman of the *Dayton Daily News* was also present.

Excuse Board Member
Absence

Mr. McFarland **moved to excuse Mr. Horrocks from the meeting.** Mr. Berbach seconded the motion. Motion passed 4-0.

Amendment to Agenda

Mr. McFarland **moved to switch Item B and Item C under New Business, as Mr. Vath was not yet available to swear in those wishing to give testimony for Item B, he was to arrive shortly.** Mr. Blake seconded the motion. Motion passed 4-0.

Approval of Minutes

August 14, 2007 Study
Session

Mr. Berbach **moved to approve the minutes of the August 14, 2007 study session.** Mr. Blake seconded the motion. Motion carried 4-0.

August 14, 2007
Meeting

Mr. Blake **moved to approve the minutes of the August 14, 2007 meeting as presented.** Mr. Springer seconded the motion. Motion passed 4-0.

**Items not on the
Agenda
NEW BUSINESS**
Deadline Dates

There were no comments on items not on the agenda.

Chairman McFarland announced that the next regularly scheduled Planning Board meeting would be held Tuesday, October 9, 2007. Preliminary Plans, Final Plats and Site Plans must be submitted by 5:00 p.m. on September 17, 2007 and temporary sign requests for display over 30 days must be submitted by 5:00 p.m. on October 3, 2007.

Friends of the Tipp City
Public Library, 11 E.
Main St. (CC/RA
zoning)- Temporary
Banner

Mr. Spring stated that the applicant proposes to erect a 29" tall x 119" wide, single-sided, temporary sign to be mounted directly above the existing doorway on the southern façade of the Library. This is to be for a period of 52 days, October 1 thru November 21, 2007. Requests for more than 60 total days or more than 30 consecutive days in a calendar year must be approved by the Planning Board, per Code §154.092 (Ordinance 05-06). The purpose of the sign is for their fall raffle. There have been similar requests in 2004-2006. Staff had no objections with the sign to be removed by November 21, 2007.

Mr. Springer **moved to approve the temporary sign for the Friends of the Library, 11 E. Main Street, for a time period of October 1 thru November 21, 2007 with the sign to be removed by November 21, 2007.** Mr. Blake seconded the motion. Motion was passed 4-0.

Three Ladies Bakery,
Lisa Howell-Anderson,
15 S. Second St., Pt.
IL 39 & IL 21 (CC/RA
zoning)-Waiver of off-
street parking
requirements

Mr. Spring said the applicant wishes Planning Board approval to waive the required off-street parking with the addition of a bakery to the 2nd Street Deli location. The use of a bakery is a principal permitted use within the CC district. There are no exterior alterations therefore the only consideration is that of the off-street parking. Since the proposed bakery will operate in conjunction with the Deli, the parking for both uses must be considered by the Planning Board. The Bakery shall provide one off-street parking space for every 200 sq. ft. of gross floor area with no less than 5 spaces provided. The Three Ladies Bakery occupies \pm 235 sq. ft. of gross floor area therefore they require 5 off-street parking spaces per code.

Mr. Spring continued that the Second Street Deli shall provide one off-street parking space per 100 square feet of gross floor area plus one space per employee on the largest work shift. The balance of the location contains \pm 685 sq. ft of gross floor area. The Deli employees 2 employees on the largest work shift. Therefore the restaurant portion of the building requires 9 parking spaces. Combined with the Bakery the total required is 14.

The required parking spaces can be reviewed and waived by Planning Board per Code §154,051(D) within the CC (Community Center District) on a case-by-case basis. Staff noted there is an existing gravel (82' x 44') off-street parking area at the southwest side of the structure which contains 2 dumpsters and a detached garage. This building also has other pre-existing uses, Francis Barber Shop, Down A Country Lane, Tips to Toes, and residential use on the upper floor.

Mr. Spring said staff did recommend approval with the following conditions:

1. That the Planning Board waive off-street parking space requirements for 15 S. Second Street for the operation of the Second Street Deli and Three Ladies Bakery.
2. That the Planning Board waive all off-street parking requirements for any future use of 15 S. Second Street which will not increase the intensity or use of this property as noted in this staff report. This is recommended so as to provide administrative relief to the Planning Board for uses which would not increase the current parking requirements delineated in this staff report, and to expedite Change of Use permits for possible future tenants.
3. If the Planning Board approves the waiver of the off-street parking requirements, the applicant will be required to obtain the required Zoning Occupancy/Change of Use Permit (already applied for).
4. Any proposed signage for the Three Ladies Bakery requires Restoration Board approval and an approved Sign Permit prior to the placement of such signage.
5. The applicant must obtain authorization/approval from the Planning Board for any proposed modifications to the approved site plan prior to the construction/undertaking of any such proposed modifications.

Mr. Spring said the applicant was available for questions and he would also try to answer any questions that the Board may have.

Mr. McFarland asked why the parking area was still in gravel. Mr. Spring said it a pre-existing lot and was grandfathered in and has been there for some time. Mr. Owen of the Chamber of Commerce said it has

Swearing in-those
wishing to give testimony

Public Hearing: David
& Carolyn Glaser,
1330 E. Evanston Rd.,
IL 4043 & 4044-Zoning
Map Amendment R-1
to R-1A (0.5881 acre
parcel)

been there since 1841. Mr. Springer asked if the Deli was on both sides of the building. Mr. Spring said 2nd Street Deli was on the Second Street side, at the south end was Tips to Toes, a ladies salon, on the north side of the structure is Francis Barber Shop, Down A Country Lane and on the upper floors is residential habitation. Mr. Springer asked where the bakery was going. Mr. Spring said it would be in the same location as the Deli.

Mr. Berbach **moved to approve the waiver of required off-street parking for 15 S. Second Street for Three Ladies Bakery and 2nd. Street Deli with the 5 conditions given in the staff report.** Mr. Blake seconded the motion. Motion passed 4-0.

Those wishing to speak during the public hearings were sworn in at this time by Mr. Vath, a notary.

Mr. McFarland **moved to open the continued Public Hearing for the zoning map amendment for David & Carolyn Glaser.** Mr. Blake seconded the motion. Motion carried 4-0.

Mr. Spring gave a history of this case. The property in question was annexed October 2, 2006. It is at the southwest corner of E. Evanston Road and S. Tipp-Cowlesville Road. Permanent zoning designation of R-1 was recommended on November 14, 2006 by Planning Board. Subsequently on December 18, 2006, City Council passed Ordinance 39-06 which adopted R-1 zoning for the property. The initial zoning was not correct to allow for the for the potential creation of a third lot on the property which had been initially discussed. The applicant wishes to create 3 lots within the 4.25 acre parcel.

Mr. Spring continued that on May 8, 2007 a public hearing was opened and after comments, the applicant requested a continuation so that a modification could be made to the request. There were several continuations due to items needed from the applicant's engineer.

Mr. Spring said the proposed rezoning would be 0.5881 acres from R-1 Open Space Residential to R-1A Suburban Residential District. A review of the Comprehensive Master Development Plan indicates it lies within Planning Area #46. The dominant land use is residential. There is also a cemetery. The following are recommendations from the Comprehensive Plan :

- The existing residential subdivisions and lots are designated "Suburban Low-Density Residential" and "Suburban Medium-Density Residential" to reflect their character.
- New infill of existing residential development is recommended in the northeastern part of this planning area and is designated "Suburban Medium-Density Residential."
- A second point of access will be needed to develop the western part of the planning area adjacent to 1-75.
- A bike path is recommended along Evanston Road in accordance with the Tipp City Parks and Open Space Master Plan.

He continued that the adjacent zoning was North- R-1B, South- R-1AAA (single family residential-Miami Co.), East- R-1, and to the West-R-1AAA

(again County residential).

Staff noted that the request before the Planning Board is strictly for rezoning and not subdivision of the existing parcels. No subdivision of property is requested or approved with this application.

Staff did recommend a positive recommendation regarding the requested rezoning from R-1 to R-1A for the 0.5881 acre tract located at 1330 E. Evanston Road.

Mr. McFarland asked if there was an existing house on the proposed rezoned area. Mr. Vath said this section was vacant. The applicant would need to go thru the subdivision process. Mr. Springer asked if the rezoned area met all the minimum lot requirements. Mr. Springer said it met the area, length, and width requirements.

Mr. Charles Howell, representing the First Baptist Church, said the church elected not to object to the rezoning. They thought it would be a help to the church.

There were no further questions or comments. Mr. Blake **moved to close the public hearing**. Mr. McFarland seconded the motion. Motion carried 4-0.

Mr. McFarland **moved to favorably recommend to City Council a zoning map amendment from R-1 to R-1A for David and Carolyn Glaser, 1330 E. Evanston Road, Inlot 4043 & 4044, 0.5881 acre rezoning**. Mr. Springer seconded the motion. Motion passed 4-0.

Mr. Vath added that the City Council on September 17 would be by motion, set a public hearing date for October 15, 2007 for the rezoning request.

There was no Old Business to discuss.

Old Business

Miscellaneous

City Council Reports:
August 20, 2007- Mr.
McFarland

Mr. McFarland reported that there was an ordinance passed to amend the zoning map for the Eidemiller property to PR/PC, another one for the 23 acres that was a donation by Meijer to the City to CD/FA/WP, and another one to add the LD overlay district to 321 N. Fourth Street. There was approval of the replat for the Westside Fire Station making it all one lot of record. There was a study session on the Emerald Ash Borer after the Council meeting.

Board member
comments

Mr. Springer asked the status on several projects. He asked the status on the Arbogast Suzuki. Mr. Vath said it was progressing and he and Mr. Vagedes were at the site to review the detention basin and that appeared to be completed. A final course of asphalt is expected in the next several weeks. Next question on Menard's. Mr. Vath said the pre-construction is next Monday, September 17 with ground breaking taking place soon after that. Mr. Springer asked about Streetscape. Mr. Vath said it was moving along. There is to be asphalt grinding soon and repaving to be done after Mum Festival. It appears to be on time.

Mr. Blake asked now that the Legacy District overlay is in place, he asked about the house that was moved to the corner of Broadway and S. Fourth Street. He asked if that could now be used. He said it appears to

be deteriorating. Mr. Vath said he would need to verify if primary residential use is permitted in the Legacy District. It had been looked at for a commercial use but that was not pursued. He was not sure of the property owner's intentions. Maintenance issues can be addressed thru staff.

Mr. Berbach had no further comments. Mr. McFarland said he had heard some complaints regarding the length of time it is taking on the Streetscape project. Mr. McFarland said he did reply that there were new utilities being installed and the heat conditions during construction. Traffic has been maintained, some inconveniences but it is going to be a benefit for the City and all. Mr. Vath said it has been a complicated construction process and 2 lanes of traffic have been maintained the entire time. The in-laid pavers have taken additional time, but the project is keeping with the original timeline. There were no other Board member comments.

Mr. Vath said there were no items specifically listed under Old Business and he was not present during Citizens' Comments. Mr. McFarland said there were none. Mr. Vath did not know if the Board wished to discuss the letter addressed to Mr. Paul Lee that had been provided with the packets. Mr. Lee was present. Mr. McFarland asked Mr. Lee if he had any comments.

Paul Lee came forward to the podium. He had received the letter from City staff regarding the parking lot on his W. Broadway property. He has made quite a bit of effort to see what can be done to complete the process. Mr. Lee said he went back to his lender and they need to see more cash flow. Without that he cannot install the parking lot. He was not sure how the Board wished to move forward with the issue. It was stated in the letter that it was "his problem". He will need to utilize the Legacy District to move forward. He felt if he cannot go forward with it then the Overlay District is somewhat useless. There has been some time given on the project and a lot of things have changed since then. He felt he went thru great expense to get to the place that he is presently at. He purchased the building, rehabbed it, and then found out there were parking issues. He went thru the expense of purchasing the adjacent lot and in that process of replatting and he was not aware that it was not to the standards that it could be used as it was. If that had been brought to light, the Lees could have changed quite a bit of the outcome. Mr. Lee continued saying "it is what it is." He was still willing to install the parking lot as approved and possibly getting it done within the two year period, but it was going to take the use of renting space upstairs to make that happen. He was asking to utilize the Overlay District uses and rent those spots out and move forward. He had a contract with a contractor that is willing to do the project in three phases. The first phase would be the underground piping and retention area, which will solve the water problem on the lot. If we can move forward with the rental units, that first phase could be done this year. Hopefully the project could be finished within one year but he would need the rental units. He could go back to his lender, show him the progress made and the income from the rentals and possibly he could finish it up sooner.

Mr. Springer asked him to further explain the three phases. Mr. Lee said the first phase would be the underground piping and tying into the existing storm sewer on Broadway and putting in the retention area,

approximate cost \$25,000. Phase two would be the grading and concrete curb of the lot. The third phase would be the paving and landscaping. Mr. Springer asked what was the City's position on the lot being put in three phases. Mr. Vath referred to the last paragraph of the letter to Mr. Lee. It states that there is no objection to granting a 24-month extension as long as surety or some type of formal guarantee is provided that the construction will be completed and if he wants to over that 24 month period to do it in a 3-part construction, as long as it follows generally accepted construction practices, erosion control, etc, that is fine. Mr. Vath said in order to get the additional uses which require additional parking even with the Legacy Overlay District requirements there needs to be some type of formal commitment and some type of surety posted to guarantee that the parking lot will get done whether it is one phase or three.

Mr. Springer said it sounded as though it is down to two issues which are the 2-year time period and the surety. Mr. Lee said he would live with the 2-year time period but as far as putting a control that the City would come in and take over the project, he would not agree to that. He believed the project will be done in that time. Mr. Vath said as far as the City taking over the project that would only occur if the applicant, Mr. Lee, did not construct the parking lot. If he constructs it there is no need for the City to be involved except to return his surety at the end of the 24-month period or when the parking lot is completed. It is not the desire of the City to have the City finish the parking lot; the desire is to have it done by Mr. Lee within the 24-month period. Mr. Springer asked when that 24-month would start and why that amount of time. Mr. Vath said the guidance he was given was the 24-month period. Mr. Springer asked if that came from the Law Director. Mr. Vath said the City Manager said 24 months would be a sufficient period of time and it is our normal subdivision process for any construction of a subdivision. A 24-month bond is provided to make sure all public improvements are completed, such as water, storm, and sanitary. The City feels it is a reasonable amount of time to complete the scope of work that is being looked at here.

Mr. Lee said the City says that is a reasonable amount of time but he has an issue to deal with regarding the storm drain off Fifth Street. Clearly the City does not wish to address that. The City doesn't want to agree that those storm drains exist at least to the point that they won't accept the fact that those drains are draining into this particular parcel. Mr. Lee said Mr. Vagedes said it was not even in the budget within the next 7-8 years. Mr. Vath said again, the letter outlines the City's position regarding the storm drainage tiles or private drainage tiles that were probably farm tiles at one point of time that bisect Mr. Borchers' property which is directly south of the Lee property. The guidance provided in the letter is to assume that Mr. Lee should not tie into those tiles, that he needs to have a positive storm drainage discharge as he has designed and shown on the plan approved in October 2004. How that issue on S. Fifth St. gets resolved, he did not know. It is an engineering issue as outlined in the letter and when it gets resolved; he did not know when or if it was going to be resolved. Mr. Vath continued for the completion of the lot, the storm drainage is designed to go to an acceptable storm sewer on Broadway. The issue of the private drainage tiles is a different issue. He understood that it was adjacent to the property but it is not the specific issue of the parking lot plan that was approved.

Mr. Lee said the drain is not the hold up. He said the discharge of that water to Broadway is the mark and that is how it is going to be constructed but to spend that kind of money and knowing that there is an issue there and he is told that it could be 7-8 years before it is addressed by the City. Mr. Blake asked what that had to do with his project.

Mr. Lee said it had a lot to do with the value of his lot if there is water that is draining off the streets and standing there on his lot. If he is going to spend \$70,000 for a parking lot and if the water is going nowhere and he is being asked for timelines and sureties that he wanted the same from the City. They may be old farm tiles but he did not know that. The City clearly had diagrams that showed storm drains coming off the street, but they are being used to drain water onto this particular piece of ground. It does clearly affect his lot. He had no problem in putting in the lot as designed; he was not asking for an outlet to postpone this. He said it was a concern due to the amount of money that is going to be invested.

Mr. Vath referred back to the letter from the City Engineer which stated that "the City has no definitive evidence where the two catch basins from S. Fifth Street, south of the Sutton-Jones property drain into the 12" private drainage tile on Mr. Borchers' property or not." Mr. Lee replied that Mr. Vagedes does know that as they put a water jet down it and found it that those clearly drain into that hole that was dug. Mr. Vath said all he could tell him was the verbiage that the City Engineer put together regarding the storm drainage issues. Mr. Vath noted Mr. Vagedes was not present at this meeting.

Mr. McFarland said Mr. Lee was in agreement with doing everything within the two year period but without any surety being posted. Mr. Lee said that was correct. Mr. Blake said if the City did not have the surety then there is no guarantee that the work will be completed within the two year period. Mr. Lee asked who the City was. The City is not the Manager and the Assistant City Manager, it is all of us. He has grown up here, invested a lot of money in the community; he has rehabbed all of his projects. He does not let them deteriorate as you raised the point about the property on the other side of the railroad track on Broadway. He said it was only to his benefit to finish this parking lot project. Mr. Lee said the Overlay District does allow him to take the required number of spaces down to 15 parking spaces if he wanted to open it up to public parking but he thought that would be absurd, seeing how the original plan shows that he needs 34 spaces. His tenants may have no place to park if he opened the lot to public parking. It would be cheaper but he has not chosen to go that way.

Mr. Springer asked Mr. Vath if October 2009 was the deadline. Mr. Vath said that would be correct. Mr. Springer asked if it was not completed by October 2009, at what point, if there is surety in place, would the City call the surety in and hire a contractor to finish the job. Mr. Vath said that was correct. Mr. Blake asked if the surety would be a percentage of the cost of completion or the cost of the project. Mr. Vath said the City generally requires for subdivisions 110% of the project cost as certified by a professional engineer and approved by the City Engineer. If Mr. Lee is indicating the parking lot cost is \$70,000, after reviewing the Engineer's estimate, we would then require 110% of that

amount. Mr. Springer asked if done in phases would it only be on the remaining phases. Mr. Vath said the surety would not be rolled or reduced, that the entire surety would be kept until the project is done. It is a relatively small amount compared to subdivisions, (Rosewood Creek was millions of dollars of surety). Mr. Springer asked how much surety is. Mr. Lee said from a bank it is the full amount, a bond is a different story. He had made some calls for that information but had not received a reply yet. The entire amount of money would need to be in place for a letter of credit. If he had that amount of money in place he would not need the letter of surety. Mr. McFarland said if Mr. Lee put up surety to the City for \$77,000 (110%), he would still need to pay \$70,00 to put in the parking lot, so that would be \$147,000 and once the lot is completed then he would get the \$77,000 back. Mr. Lee agreed with that statement.

Mr. Blake said if he had the \$77,000 he would not need the surety. Mr. Lee said it made more sense to him if it is a zoning issue, to put it in place that if the lot is not done by the end of the two-year period, then we evict tenants. Mr. Vath said the City does not wish to be in the position to evict tenants from Mr. Lee's building. The City just wants the original commitment that was made back in 2004 to be completed. Mr. Lee said it will be completed. Mr. Vath said we are willing to allow an additional 24 months for that to happen. Mr. Lee said Mr. Vath was saying "we"; who is the City? Mr. Vath said the City is the Planning Board who needs to approve any modifications of the approved site plan. Mr. Lee said he was not asking for modifications. Mr. Vath said it was a modification as the approved parking lot was to be completed by October 2006 and nothing has happened since that time, so technically it was in violation of the approval by the Planning Board for the site plan.

Mr. Lee said the reason for nothing happening is because the Legacy District was brought into the scope of things which was going to change the possible amount of parking spaces required and/or the possible uses of the building. The lot was stopped at that point until that District was created. Before that the residential apartments were not permitted in that zoning district. To put that many parking spaces and not be able to rent out the building, how was he to pay for it. Mr. Blake said what was being discussed was gone over at the last meeting, so the point of discussion was if two years was enough time to complete the parking lot and if surety is required or could it be a bond or does the City comes in and finishes the project and bills the property owner. Mr. Vath said that was not an option. Mr. Springer said there was an approved site plan that should have been completed by October 2006. Mr. Vath said that included a one-year extension. Mr. Springer said the lot is sitting there in non-compliance and there have been others lot reviewed since then; then there needs to be a modification to the site plan, does that go to Council? Mr. Vath said it would be a Planning Board issue to approve and modify site plans. The Board also has the authority to grant extensions to allow for the construction. Mr. Vath continued that it was staff's recommendation to make sure there is closure and that now the parking lot will get completed. Mr. Springer said if, hypothetically, the timeline was adjusted and a bond provided..... Mr. Vath said a bond is surety, Mr. Lee could provide cash, an irrevocable letter-of-credit, or a bond.

Mr. Vath suggested Mr. Lee speak to Brower Insurance Agency which is larger provider of bonds in the Miami Valley area. Mr. Springer said the Board needs to look at the timeline and we do need a bond in place

in the event of the work not being completed. Mr. Springer said he trusted Mr. Lee to get it done but there is also the reality of the market conditions. Will the buildings be able to generate the amount of cash needed in 2-3 years? Mr. Lee said that was the problem, as if he is unable to rent them out, then he is stuck and he knows that the City wants to see the parking lot put in, but he cannot pay for it this could be discussed until "the cows come home". He felt they went to great expense after purchasing the place and buying the adjacent lot which had an existing parking lot. Because he changed the use of his building, his lot was not grandfathered in as others have been. A lot of places change use, a bank to a bakery or a café and nothing is required. Mr. Blake said that was different as you cannot physically create any parking in the downtown area. Mr. Lee said he could not create the parking without buying the adjacent lot. Mr. Blake said Mr. Lee had the opportunity to not purchase the property and not purchase the lot. Mr. Lee said that was exactly correct. Mr. Blake said this is a situation that Mr. Lee created. Mr. Lee said he had created it.

Mr. McFarland asked if a bond or some sort of surety was provided to the City, the City would grant an occupancy permit for the upstairs units before the parking lot was completed. Mr. Vath said that is what was stated in the letter that the City would allow the renting of apartments as long as surety is provided to guarantee that the parking lot would be constructed in the 24-month period. Mr. McFarland asked if surety could be a bond, letter of credit or cash. Mr. Vath said that was correct. Mr. Vath said it depends upon the applicant's capability to obtain a bond or a letter-of-credit; he did not know which was more advantageous for Mr. Lee.

Mr. McFarland said at this point the Board could not do anything until Mr. Lee finds out how he is providing surety. Once that is provided, everything should go thru fine. Mr. McFarland said the Board cannot bend any of the City's rules. Mr. Lee said the Board would not be bending rules it was a matter of allowing it to go forth and the Board has the power to extend the time without the bond. Mr. Lee said he would not sign a letter that would allow the City to come in, if something happened, and finish the property. Mr. Berbach said he heard that earlier and we just keep rehashing the same thing and we are getting nowhere. Mr. Berbach said he had nothing to add. Mr. McFarland said to Mr. Lee, the ball was in his court. Mr. Lee said, "Okay, then we are going to go nowhere."

Adjournment

There being no further business for discussion, Mr. Berbach **moved that the meeting be adjourned.** Mr. Blake seconded the motion. The motion unanimously carried. Chairman McFarland declared the meeting adjourned at 8:26pm.

Michael McFarland, Planning Board Chairman

Attest: _____
Marilyn Fennell, Board Secretary